

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

UNIONBANCAL CORPORATION
& SUBSIDIARIES,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

No. 06-587 T

Judge Loren A. Smith

MOTION TO RECONSIDER OPINION AND ORDER GRANTING DEFENDANT'S
MOTION TO STAY PROCEEDINGS

EXPEDITED RESOLUTION REQUESTED

Plaintiff respectfully moves this Court to reconsider its Opinion and Order granting Defendant's Motion to Stay Proceedings. Because Plaintiff is in the course of trial preparations, and because the parties' initial exhibits lists are exchanged within three weeks and Plaintiff's pre-trial memo is due within five weeks, Plaintiff respectfully requests that its Motion to Reconsider be resolved on an expedited basis. In support of its motion, Plaintiff files a memorandum of law with the Court and states as follows:

1. On June 9, 2010, this Court granted Defendant's Motion to Stay Proceedings pending the outcome of the Federal Circuit's resolution of the appeal in *Wells Fargo & Co. and Subsidiaries v. United States*, No. 2010-5108 (Fed. Cir. docketed Apr. 16, 2010). In granting Defendant's Motion, this Court relied upon statistics provided by Defendant that show that the median time of disposition of "tax cases" by the Federal Circuit is 10.85 months from docketing to final disposition.

2. However, Defendant's calculation by Defendant includes all "tax cases" and therefore fails to take into account the complexities associated with tax cases involving questions of economic substance and substance-over-form. Defendant's calculation therefore does not accurately reflect when the Federal Circuit is likely to decide *Wells Fargo*.

3. In the only significant economic substance or substance-over-form cases decided in the Federal Circuit within the last five years, the Federal Circuit has taken, on average, more than 18 months, and as long as 25 months, to issue an opinion.

4. Furthermore, *Wells Fargo* involves 26 sale-leaseback transactions, while *Consolidated Edison Co. of N.Y. and Subsidiaries v. United States*, 90 Fed. Cl. 228 (2009), involves a lease-leaseback transaction similar to the transaction structure at issue in this case. Entry of final judgment in *Consolidated Edison* is still pending. An additional stay pending the outcome of the anticipated appeal of *Consolidated Edison* could further delay commencement of the trial in this case well into 2012 or even later.

WHEREFORE, Plaintiff respectfully requests that the Court reconsider its Opinion and Order granting Defendant's Motion to Stay Proceedings.

Dated: June 9, 2010

Respectfully Submitted,

s/ David F. Abbott

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CERTIFICATE OF SERVICE

I, David F. Abbott, hereby certify that on this 9th day of June, 2010, I caused the foregoing Motion to Reconsider Opinion and Order Granting Defendant's Motion to Stay Proceedings to be served upon Defendant by electronic delivery, to the following:

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